

## **THE FTC/HUD SETTLEMENT WITH FAIRBANKS CAPITAL CORP. FREQUENTLY ASKED QUESTIONS**

### **What are the Federal Trade Commission (FTC), Department of Housing and Urban Development (HUD), and class action cases about?**

The FTC and HUD reached a settlement with Fairbanks Capital Corp. to settle charges that it engaged in unfair and deceptive practices in the servicing of subprime loans. Class action attorneys brought a similar case on behalf of consumers nationwide. The central allegations of the cases are that Fairbanks failed to post consumers' mortgage payments in a timely and proper manner, and imposed unauthorized fees. In addition, the cases allege that Fairbanks charged consumers for homeowners' insurance when they already had adequate insurance, used abusive collection tactics, failed to meet its obligations under the Fair Credit Reporting Act, and engaged in other law violations.

### **What does the FTC/HUD settlement consist of?**

The FTC/HUD settlement includes a \$40 million consumer redress fund, but please note that we will not be able to issue any refunds unless and until the court gives final approval to the settlement. Fairbanks also agreed to halt the illegal servicing practices and implement significant changes to its business practices. In addition, Fairbanks has corrected the credit status for certain borrowers who may have been wrongly classified as delinquent – Fairbanks returned those borrowers to current status and reported their current status to the credit bureaus. The class action settlement includes additional relief for consumers.

### **What do I have to do to participate in the FTC settlement?**

If you are potentially eligible for a partial refund from the FTC settlement fund, you should receive the Notice of Proposed Class Action Settlement in the mail, along with one or more claim forms. We mailed the notice and claim forms in the second half of February. If you received a mailing from us, please read the notice and claim form(s) carefully. If you want to participate in the settlement, you will have to sign and return the claim form(s) to the designated address by April 24, 2004 (your claim must be postmarked on Saturday, April 24 or earlier).

If the court approves the settlement, any claims you might have with respect to Fairbanks' servicing of your loan, other than claims you may bring in defense to a foreclosure action, will be released. That means you won't be able to sue Fairbanks on your own if you participate in our settlement. If you do not want to release any claims, you should exclude yourself from the settlement (see below).

**Has the settlement received final approval, or is it still preliminary?**

It is still preliminary. Please be patient. It may be several months before we receive final approval from the court for the settlement and are able to issue refunds. If the court does not approve the settlement, the parties will return to litigation, and there will be no refunds issued. This information will be updated in the future – please check back here for the latest information.

**Who is eligible to participate in the FTC/HUD settlement?**

In general, you are eligible for money from the FTC redress fund if your loan was serviced by Fairbanks between January 1, 1999 and December 10, 2003, and (1) your loan was in default or Fairbanks treated it as in default, and you were charged late fees and/or certain other default-related fees; and/or (2) Fairbanks imposed a prepayment penalty in violation of law or contract.

The class action settlement also includes a “Reverse and Reimburse” program for certain other actions that Fairbanks took affecting consumers’ loans (see below).

**My address recently changed. How do I update it in your system?**

If your address has recently changed, please call the Redress Program Administrator’s support line at 1-800-377-1287. In order to accurately update your information, we will ask you to provide the last four digits of your Social Security number and your loan number for identification purposes.

**How much money will I get from the settlement?**

We do not know yet. It will depend on how much you paid and how many people submit claims.

**I believe I’m eligible to participate in the FTC settlement, but I didn’t get a notice in the mail. What should I do?**

You are only eligible to participate in the FTC settlement if your loan was serviced by Fairbanks between January 1, 1999 and December 10, 2003, and (1) you were charged late fees and/or default-related fees; and/or (2) Fairbanks imposed a prepayment penalty in violation of law or contract. If you believe you are eligible under this definition, please call the Redress Program Administrator’s support line at 1-800-377-1287. You will be able to leave a voice mail with your information, and we will send you a notice, the claim forms, and a request for additional documentation from you. Once you return the requested documentation, we will determine whether you are eligible for a settlement payment. You must return the requested documentation and the signed claim form(s) by April 24, 2004, so please act promptly.

**I received a notice in the mail, but I didn't receive a claim form. What should I do?**

There is no claim form for the Reverse and Reimburse program (see question below). If you are eligible for the reversal of certain charges, but you are not eligible for a payment from the FTC Redress Fund, you should have received a notice without any claim form. You are only eligible to receive a refund from the FTC settlement if your loan was serviced by Fairbanks between January 1, 1999 and December 10, 2003, and (1) you were charged late fees and/or default-related fees; and/or (2) Fairbanks imposed a prepayment penalty in violation of law or contract. If you believe you are eligible under this definition, please call the Redress Program Administrator's support line at 1-800-377-1287.

**I received a claim form with an amount of 0 dollars printed at the top. What should I do?**

If you received a claim form with a \$0.00 balance printed at the top, that means that our records show that Fairbanks charged you some late fees or other default-related fees, but those fees have been credited back to you already. If you believe you have been harmed by this conduct, you may sign and submit the claim form, but your claim will be subject to verification.

**Can I exclude myself from the settlement?**

Yes. To exclude yourself from the Class, you must send a Request for Exclusion by first-class mail, postage prepaid, to the Claims Administration Center, Gilardi & Co., P.O. Box 808011, Petaluma, CA, 94975-8011. Your Request for Exclusion must be in writing and postmarked by April 9, 2004.

The Request for Exclusion must include:

- 1) your name, address, telephone number and the last four digits of your Social Security number;
- 2) your Fairbanks loan number(s);
- 3) a statement that you and all other borrowers named on your mortgage note are seeking exclusion; and
- 4) your signature and the signature of all other borrowers named on the mortgage note.

If you are acting on behalf of another person or entity, your Request for Exclusion also needs to include documentation (such as a power of attorney) sufficient to show your authority to act on behalf of that person or entity.

If you do not follow these instructions, you will not be excluded from the class, and you will be bound by the settlement.

If you exclude yourself from the class, you will not release any claims you might have relating to Fairbanks' servicing of your loan, and you will not receive a refund from the settlement fund.

**How will the FTC settlement fund be distributed?**

The fund will be divided into two components. One component, which will be about \$35 million, will be paid out as follows: If your loan was ever in default (or Fairbanks treated it that way), you will be eligible to receive money in proportion to the amount of money in late fees and other default-related fees that you were charged. We expect that the total amount charged to consumers will exceed the amount in the redress fund. In that case, you will be paid on a pro rata basis. That is, the money you receive will be equal to only a portion of the total fees you paid.

In addition, if you paid an improper prepayment penalty, you will be eligible to receive a refund of a portion of any amount of the prepayment penalty that was in violation of law or contract. If your claim for an improper prepayment penalty is accepted, the amount you will receive will depend on the number of claims submitted, but it will be at least \$200 (or the amount that you paid for your prepayment penalty, if it is less than \$200).

The second component, of about \$5 million, will be distributed to people who have lost their homes to foreclosure as a result of the alleged improper loan servicing conduct by Fairbanks. If you lost your home to foreclosure, you may make a claim against both parts of the fund.

You may have received more than one claim form, depending on your circumstances. Be sure to submit all claim forms for which you want to make a claim.

### **When will I receive my settlement payment?**

We will not be able to issue refunds unless and until the court gives final approval. The final approval hearing is scheduled to take place on May 12, 2004 (and is subject to delay). After the hearing, it will probably take the court some time to decide whether to give the settlement final approval. If the court gives final approval to the settlement, we hope to mail refund checks soon afterward. This information will be updated in the future – please check back for the latest information.

### **What is the Reverse or Reimburse Program?**

As part of its settlement with the class, Fairbanks also has agreed to reimburse certain charges in full, or to reverse such charges. This is called the “Reverse or Reimburse” Program, and it applies to:

- 1) homeowners’ insurance charges (as well as related late payment fees and other default-related fees) imposed by Fairbanks, even though the borrower already had an existing policy of homeowners’ insurance;
- 2) tax penalties and/or interest and charges resulting from Fairbanks’ failure to make timely tax payments from the borrower’s escrow account;
- 3) property appraisal and inspection fees for brokers’ price opinions and inspections that were not completed;
- 4) excess interest collected at payoff and not previously refunded; and

5) excess interest collected due to rounding errors.

The FTC is not involved in this part of the class settlement. If you are eligible for these benefits, and if the settlement is approved, you will receive separate notice about the benefit from Fairbanks. In connection with items (1) and (2) above, Fairbanks may have enough information to determine that you were charged improperly and will therefore reverse the improper charges automatically. If Fairbanks does not have the necessary information, you will be given an opportunity to submit additional information about your property insurance coverage or real estate tax penalties. If you do so, you will receive a refund for the appropriate amount.

If you have questions about this part of the settlement, please contact:

Gary Klein, Esq.  
John Roddy, Esq.  
Grant & Roddy  
44 School Street, Suite 400  
Boston MA 02108

Niall P. McCarthy, Esq.  
Cotchett, Pitre, Simon & McCarthy LLP  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
San Francisco CA 94010

**Will participation in the settlement affect what I owe on my loan? Should I stop making payments on my loan?**

No. Your loan obligations are not affected by the settlement, and you should continue to make your regularly scheduled monthly payments.

**Who is Gilardi & Co.?**

Gilardi & Co. is the Redress Program Administrator. They are administering the settlement for the FTC/HUD.

**Where can I get additional information?**

The order giving preliminary approval to the settlement and related documents in this action are available online at [www.ftc.gov/fairbanks](http://www.ftc.gov/fairbanks) and [www.gilardi.com/fairbanks](http://www.gilardi.com/fairbanks). The documents also are available for inspection at the office of the Civil Clerk, United States District Court for the District of Massachusetts, John Joseph Moakley Courthouse, One Courthouse Way, Boston, MA 02210.

**How can I learn more about my consumer rights?**

To get free information on consumer credit issues, visit the FTC online at <http://www.ftc.gov/bcp/menu-credit.htm>. You may be especially interested in the brochures “Mortgage Servicing: Making Sure Your Payments Count” and “Fair Credit Reporting.”